

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14546 of 1993

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

THE DISTRICT DEVELOPMENT OFFICER

Versus

MR. MAHESHKUMAR MOHANLAL RANA

Appearance:

MR YN OZA for Petitioner

MR PF MAKWANA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India at the instance of the District Development Officer, Bharuch District Panchayat, challenging the decision of the Labour Court in Misc. Application No.24/92, whereby the said Misc. Application

(under Rule 26-A of the Gujarat Rules under the I.D. Act) for restoration of the original Reference (LCB) No.496/90 was sought to be quashed and set aside, and for directions as to rehearing of the said main reference. This restoration application was rejected, which is the subject matter of the present petition.

2. Before proceeding further on the merits of the matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohammad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappraise the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. It is pertinent to note that the Misc. Application No.24/92 rejected by the Labour Court was an application for restoration of the original reference, on the ground that the said reference was decided *ex parte*, and therefore requires to be quashed and set aside. This was an application made under Rule 26-A of the Industrial Disputes (Gujarat) Rules, 1966, which on a plain reading discloses that such an application would lie only in respect of "an *ex parte* order, award or report". On the facts of the case the Labour Court has found that the judgement and award which is the subject matter of the main Reference (LCB) No.496/90 is not an *ex parte* award inasmuch as the respondents in that proceeding, being the present petitioner, were served, had filed Vakalatnama of their advocate, had filed a number of applications therein, but had chosen to remain absent.

4. These are findings of fact recorded by the Labour Court on the basis of the original record of the said Reference (LCB) No.496/90.

5. I see no reason to interfere with the findings of fact recorded by the Court.

6. Even during the course of hearing before me it was not urged that the findings of fact are in any way perverse or not sustainable on the facts of the case. All that is urged is that the present petitioner as

respondent in the original reference has a good defence on merits which requires to be considered after restoring the main reference. This is neither here nor there. A defence on merits could not have been considered by the Labour Court while deciding the restoration application, for the simple reason stated in the impugned judgement and order, that it was not exercising appellate jurisdiction over the original award. The mere fact that there is a possibility of good defence in the main proceeding which is already decided is no reason by itself to set aside the award and to direct its rehearing. The only ground on which such a rehearing could be granted under the aforesaid Rule 26-A is where the original award is an exparte award. Once it is found on the facts of the case that the said original award was not an exparte award, there is no ground for restoration, and consequently the restoration application is without legal cause, and is bound to be rejected.

7. On the facts of the case I find that the Labour Court was eminently justified in rejecting the Misc. Application No.24/92, refusing to set aside the original award, and therefore the impugned judgement and order is required to be upheld.

8. There is, therefore, no substance in the present petition and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.
